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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 24th March 1955

S.R.O. 785.—Whereas the election of Shri Hardit Singh as a member of the Legislative Assembly of the State of PEPSU, from the Dhanaula Constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Singh S/o Shri Bir Singh, Village Dhaula, Tahsil Barnala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE ELECTION TRIBUNAL, BHATINDA

S. Ram Singh S/o S. Bir Singh of Dhaula—*Petitioner,*

Versus

S. Hardit Singh of village Bhatlan and others—*Respondents.*

Chhakan Lal—*Chairman.*

Kul Bhushan and G. M. Kekre—*Members.*

ELECTION PETITION No. 10 OF 1954

PRESENT:

Shri Harbans Lal for petitioner and Shri M. R. Sharma for respondent No. 1.

ORDER

Respondents Nos. 1 to 5 were candidates for election to the PEPSU Legislative Assembly from the Dhanaula Constituency. Respondent No. 1 S. Hardit Singh was returned and the other four respondents were defeated. The respondents secured votes as under:—

S. Hardit Singh Respondent No. 1	.. 7686
S. Surjit Singh Respondent No. 2	.. 7682
S. Sampuran Singh Respondent No. 4	.. 6982
S. Jagat Singh Respondent No. 3	.. 2068

The petitioner who is an elector in the said constituency has lodged this election petition u/s 81 of the Representation of People Act, 1951, claiming a declaration that the election of respondent No. 1 is void, on the following grounds:—

1. That 19 votes were polled in favour of respondent No. 1 by personation at the polling stations of Maur, Ghuns, Pakhho and Kot Dunna;

2. That the petitioner believes that of the 5 tendered votes cast at the election most of them were tendered for respondent No. 2 and that if they were counted the respondent No. 1 would lose his majority;

3. That at the time of counting of votes on 24th February 1954 one of the ballot papers relating to village Rureke Kalan Polling Station found in the ballot box of respondent No. 1 had a one rupee note attached to it with a pin, that the said vote was invalid and should be struck off from the count.

The contesting Respondent No. 1 traversed all the pleas in the petition and the following issues were framed:—

1. Whether any, if so, how many votes were cast in favour of respondent No. 1 by impersonation? What is its effect.
2. How many tendered votes if any were cast as specified in annexure I appended to the petition, and how many were wrong votes liable to be cancelled? How many were invalid votes liable to be cancelled as a result thereof?
3. Whether on 24th February 1954 at the polling station of Rureke Kalan a ballot paper from an elector from village Rureke Kalan was found in the ballot box of respondent No. 1 with a rupee note attached to it and if so whether that vote is liable to be rejected?
4. Whether as a result of the findings on all or any of the above issues respondent No. 1 did not receive the requisite majority to entitle him to have been declared elected?
5. To what relief if any is the petitioner entitled?
6. What orders if any should be passed in this case under sections 98 & 99 of the Representation of People Act, 1951?

Issue No. 1.—This is by far the most important issue in this case. In connection with this issue the petitioner has led both oral and documentary evidence. Documentary evidence comprises the following election records produced by the Election Qanungo P. W. 1.

I. Ex. PW1/2 marked voters list of village Maur showing that ballot papers No. 063833, 090915, 090941, 063885, 063829 were noted against the names of Kishan Singh, Suchet Singh, Harnam Kaur, Hari Singh and Gajjan Singh electors.

II. Ballot paper No. 063833 issued to elector Kishan Singh son of Jangir Singh bearing No. 207 in the voters' list (Ex. PW1/4).

III. Ballot Paper No. 090915 issued to elector Suchet Singh son of Khushal Singh bearing No. 320 in the voters' list (Ex. PW1/5).

IV. Ballot paper No. 090941 issued to elector Harnam Kaur wife of Dalip Singh bearing No. 616 in the voters list (Ex. PW1/6).

V. Ballot paper No. 063885 issued to elector Hari Singh son of Sobha Singh bearing No. 718 in the voters list (Ex. PW1/7).

VI. Ballot paper No. 063829 issued to elector Gajjan Singh son of Chanda Singh bearing No. 792 in the voters list (Ex. PW1/8).

VII. Marked voters' list relating to village Dhilwan Ex. PW1/17 showing that ballot paper No. 089116 was noted against the name of elector Sadhu Singh.

VIII. Ballot paper No. 089116 issued to elector Sadhu Singh son of Gujar Singh bearing No. 444 in the voters list (Ex. PW1/19).

IX. Marked voters list relating to village Kot Dunna (Ex. PW1/21) showing that ballot paper No. 81351 was noted against the name of elector Bant Singh.

X. Ballot paper No. 81351 issued to elector Bant Singh son of Ajit Singh bearing No. 10 in the voters list *vide* (Ex. PW1/23).

The Election Qanungo produced envelopes containing valid votes secured by S. Hardit Singh respondent No. 1 at the Maur, Dhilwan and Kot Dunna Polling Stations. The seven ballot papers noted above and issued to (Kishan Singh son of Jangir Singh) Ex. PW1/4 (Suchet Singh son of Khushal Singh) Ex. PW1/5, (Mst. Harnam Kaur wife of Dalip Singh) Ex. PW1/6 (Hari Singh son of Sobha Singh) Ex. PW1/7 (Gajjan Singh son of Chanda Singh) Ex. PW1/8 (Sadhu Singh son of Gujar Singh) Ex. PW1/19 (Bant Singh son of Ajit Singh) Ex. PW1/23 were found in those envelopes.

The combined effect of the documentary evidence referred to above is that Kishan Singh son of Jangir Singh, Suchet Singh, son of Khushal Singh, Harnam Kaur wife of Dalip Singh, Hari Singh son of Sobha Singh, Gajjan Singh son of

Chanda Singh, Sadhu Singh son of Gujar Singh, Bant Singh son of Ajit Singh voted in favour of respondent No. 1.

The petitioner's case is that out of the seven voters noted above, three of them namely Kishan Singh, Harnam Kaur and Hari Singh were dead, that three others viz. Gajjan Singh, Sadhu Singh and Banta Singh were in the jail on the day of the polling and that Suchet Singh did not vote at all. In support of this plea the petitioner led the following evidence:—Suranjan Singh, Head Moharrir P. S. Sehna P. W. 5 produced the Death Register relating to Police Station Sehna for the year 1953-54. Ex. P5 is a copy of 3 entries from the same. These show that Hari Singh son of Sobha Singh of village Maur Kalan, Harnam Kaur wife of Dalip Singh of village Maur Kalan, Kishan Singh son of Jangir Singh of Maur Kalan died respectively on 1st April 1953, 16th August 1953 and 20th January 1954.

Oral evidence was also led to corroborate the entries in the Death Register. Giani Inder Singh P. W. 9 Sarpanch of the Adalti Panchayat of Maur gave evidence to the effect that Harnam Kaur widow of Dalip Singh of village Maur who was occupying a house adjoining his was dead at the time of the last general election, and that there is no other woman bearing the same name in village Maur.

Mal Singh P. W. 11 stated that his father Hari Singh son of Sobha Singh of village Maur was dead at the time of the last general election.

Mohan Singh P. W. 7, Kesar Singh P. W. 8 both Lambardars of village Maur gave evidence to the effect that Kishan Singh son of Jangir Singh was dead at the time of the last general election and that there is no other person of that name in that village.

Assistant Superintendent of Central Jail Patiala P. W. 2 Hukam Singh, produced "Register of Convicted Prisoners admitted" and gave evidence to the effect that according to entries in the said register the following three prisoners were admitted to and released from central jail Patiala on the dates noted against each:—

Name	Date of admission to jail.	Date of release from jail.
1	2	3
Gajjan Singh s/o Chanda Singh	25-11-53	25-3-54
Bant Singh s/o Ji Singh of V. Kot Dunna P. S. Dhanula	28-10-53	8-5-54
Sadhu Singh s/o Gajjan Singh of Dhillwana P. S. Barnala	12-8-53	30-4-54

The witness produced copies of the relevant entries from the "Register of convicted prisoners Admitted" relating to the above named three persons. They are Ex. PW2/1, Ex. PW2/2 and Ex. PW 2/3.

Oral evidence was also led to corroborate the entries in the jail records to show that the above named three prisoners were in jail on 20th February, 1954, the day on which polling took place. Lambardar Kesar Singh P. W. 8 of village Maur stated that Gajjan Singh son of Chanda Singh was undergoing imprisonment at the time of the last general election and that there is no other person bearing the same name in village Maur. Gajjan Singh son of Chanda Singh himself appeared in the witness box as P. W. 10 and made a statement to the same effect.

Naib Sarpanch of Nagar Panchayat of village Dhillwan Parshotam Singh P.W. 12 gave evidence to the effect that Sadhu Singh son of Gajjan Singh of V. Dhillwan was undergoing imprisonment in the central jail Patiala at the time of the last general election and that there is no other person bearing that name in that village. Gurdial Singh P. W. 13 also gave evidence to the same effect.

Lambardar Sawan Singh P. W. 14 of village Kot Dunna stated that Bant Singh son of Ajit Singh is his nephew and that he was undergoing imprisonment in Central Jail Patiala at the time of last general election and that there is no other person bearing the same name in his village. Lambardar Gajjan Singh P.W. 15 of village Kot Dunna also gave evidence to a similar effect.

Suchet Singh son of Khushal Singh P. W. to whom according to the records produced by the election Qanungo ballot paper No. 090915 was issued and who voted in favour of S. Hardit Singh respondent No. 1 gave evidence as P. W. No. 4. He is at present the Patwari of Kotra Circle. On 20th February 1954 he was working as Patwari at Pirda Kot. He stated that on that day he remained in the village and was making arrangements in connection with the election. To corroborate his statement he produced an entry in his roznamcha dated 20th February 1954 of which Ex. PW3/1 is a copy, showing that he was making arrangements in connection with polling on 20th February 1954 at Pirda Kot.

In rebuttal the respondent also produced 3 witnesses inclusive of himself. Sher Singh R.W. 1 and Kahan Singh R. W. 2 gave evidence to the effect that Suchet Singh Patwari P.W. 4 was present on the day of polling in village Maur with the object of casting his vote. S. Hardit Singh respondent R. W. No. 3 stated that he did not get any person to personate for any elector to cast his vote in his favour and that he had given directions to his polling agents that personation should not be resorted to.

On the above evidence the petitioner contended that he had proved that:—

- (a) Three electors namely Kishan Singh son of Jangir Singh, Harnam Kaur wife of Dalip Singh and Hari Singh son of Sobha Singh who according to the election records voted for respondent No. 1 were dead on the day of polling;
- (b) That three other electors namely Gajjan Singh, Sadhu Singh and Banta Singh who according to the election records voted for respondent No. 1 were on the day of polling undergoing imprisonment in the Central Jail Patiala;
- (c) That Suchet Singh P.W. 4 another elector who according to the election records cast his vote in favour of respondent No. 1 did not actually vote at all;
- (d) That inferentially all the persons who actually received the ballot papers and cast votes personated for the 7 electors whose names are given in (a), (b) and (c) above.

In his arguments learned counsel for the respondent No. 1 did not challenge the correctness of the fact that Gajjan Singh, Sadhu Singh and Banta Singh were in jail and Kishan Singh and Harnam Kaur were dead on the day of polling. Learned counsel, however, challenged the contention that Hari Singh son of Sobha Singh was also dead on the day of polling and Suchet Singh P.W. 4 did not cast his vote at all. In regard to Hari Singh, he argued that it is not clear from the evidence of Hari Singh's son Mal Singh P.W. 11 that there is no other person bearing the name of Hari Singh son of Sobha Singh in village Maur and that, therefore, the possibility of the elector being alive cannot be ruled out. This argument is purely specious. If Hari Singh son of Sobha Singh whose name is on the voters list is alive nothing was easier for the respondent than to have produced him as a witness and thereby pricked the bubble of the petitioner's contention that he is dead. Besides even the respondent had nothing to say on the subject when he gave evidence in the witness box. The inference is, therefore, irresistible that Hari Singh is also dead.

In regard to Suchet Singh P.W. 4 learned counsel for the respondent argued that his evidence stood rebutted by the evidence of R. Ws. 1 and 2. We are unable to accept this contention either. The evidence of Suchet Singh P.W. 4 is corroborated by the entry in his roznamcha which shows that on 20th February 1954 he was busy with election arrangements in village Pirda Kot. Besides it has not been shown why Suchet Singh should perjure himself in the interests of the petitioner if he really had cast his vote on the polling day. In the circumstances we have no hesitation in accepting the evidence of Suchet Singh that he did not cast his vote.

Learned counsel for respondent contended that entries in the Death Register are not admissible in evidence. This contention is however absolutely without force as such entries are admissible in evidence under section 35 of the Indian Evidence Act. Besides, in this particular case we have also got oral evidence corroborating the entries in the Death Register, which has not been rebutted by any evidence. We have therefore no hesitation in rejecting the argument of learned counsel.

Learned counsel for the respondent next vehemently challenged the genuineness of the election records produced by the Election Qanungo. Besides he contended that it had not been proved that the seals that were found on the election papers were affixed by the Presiding Officer of the polling

station or the Returning Officer and that since these officers had not been produced as witnesses to prove the seals the possibility of the election records having been tampered with cannot be ruled out. After carefully considering the arguments of the learned counsel we find ourselves unable to accept his contention. The election records were produced from proper custody and at the time of their production in court the seals on all the packets containing them were intact. There is no doubt that no evidence has been led on behalf of the petitioner to show that the seals which we found on the various packets containing the records were identical with the seals which were originally affixed, but this was hardly necessary. According to Sections 56 and 57 clause 6 of the Indian Evidence Act the court can take judicial notice of all seals which any person is authorised to use by any Act of Parliament or other Acts or Regulations having the force of law in India. According to rule 32 of Conduct of Elections and Election Petitions Rules the presiding officer of each polling station is required as soon as practicable, after the close of the poll, to make the following documents into separate packets and to seal each packet and to send all the packets to the Returning Officer:

1. The unused ballot papers;
2. The tendered ballot papers;
3. The returned ballot papers;
4. The marked copy of the electoral roll;
5. Tendered votes list;
6. The list of the challenged votes; and
7. Any other paper directed by the returning officer to be kept in a sealed packet.

Again according to Rule 46 Clause IX of the conduct of Elections and Election Petitions Rules after the ballot papers in all the ballot boxes have been counted and valid votes separated from those that are rejected the valid votes are counted for each candidate and put in a separate packet which is sealed. According to rules 51, 52 and 53 of the Conduct of Elections and Election Petitions Rules all the documents connected with polling are to be kept intact till such time as they are opened by the Election Tribunal or other competent court. Two types of documents were produced before us by the Election Qanungo namely marked voters list and covers containing ballot papers secured by S. Hardit Singh respondent in sealed covers. Now according to section 114 illustration (e) the court may presume that judicial and official acts have been regularly performed. Therefore unless the contrary is proved we are entitled to presume that the seals that we found on the covers produced by the Election Qanungo were the seals that had been affixed by the Polling Officer and Returning Officer under rules 23 and 46 of the Conduct of Elections and Election Petitions Rules and under sections 56 and 57(6) of the Indian Evidence Act to take judicial notice of those seals. Under these circumstances we are competent to take cognizance of the election records produced by the Election Qanungo, without demanding formal proof of the genuineness of seals or of documents themselves.

Learned counsel for the respondent also challenged petitioner's contention that ballot papers No. 063833, 090915, 090941, 063885, 063829, 089116, 081351 issued respectively to Kishan Singh, Suchet Singh, Harnam Kaur, Hari Singh, Gajjan Singh, Sadhu Singh and Banta Singh were really issued to them and to nobody else. Now the marked voters lists relating to the village Maur, Dhilwana and Kot Dunna show that the number of ballot papers issued to any elector is noted against his name and the numbers of ballot papers noted against the names of the aforesaid seven electors are those which are given above. Learned counsel however argued that no independent evidence has been produced to show that this fact signifies that these very ballot papers were issued to these electors. Rule 23 clause 2 of Conduct of Elections and Election Petitions Rules lays down that

"Such polling officer shall at the time of delivery of the ballot paper or papers place against the serial No. of the elector in the electoral roll a mark to denote that the elector has received a ballot paper or papers and shall also keep a record of the serial No. or Nos. of the ballot paper or papers supplied to the elector in such manner as the Returning Officer may subject to any general or special instructions issued in that behalf by the Election Commission direct".

Apparently the polling officer in the present instance kept the record of the serial numbers of the ballot papers required by Rule 23 by noting the number of ballot paper issued to any elector against the serial No. of that elector in the electoral roll. It has not been shown that the Election Commission has issued

any special directions for maintaining such records. Therefore in the absence of any such directions it must be presumed that the Returning Officer caused this record to be maintained in the manner in which it was actually prepared. Since in the present instance the record has been maintained in the spirit of rule 23, it must also be presumed under section 114 illustration (e) of the Indian Evidence Act to have been regularly maintained. Therefore it follows as a necessary corollary that the ballot paper noted against any particular elector was issued to him. In the circumstances we reject the contention of the learned counsel that the marked electoral roll does not prove that the ballot papers noted against the seven electors named above were not issued to them. To sum up then we hold:—

- (a) That the election records purport to show that ballot papers Nos. 063833, 090915, 090941, 063885, 063829, 089116, 081351 were issued to Kishan Singh (elector No. 207), Suchet Singh (Elector No. 320), Harnam Kaur (elector No. 616), Hari Singh (elector No. 718), Gajjan Singh (elector No. 792), Sadhu Singh (elector No. 444) and Banta Singh (elector No. 10) respectively;
- (b) That three of the above-said electors namely Kishan Singh, Harnam Kaur and Hari Singh were dead on the day of polling, that three others namely Gajjan Singh, Sadhu Singh and Banta Singh were in jail and therefore incapable of voting and that Suchet Singh did not cast his vote at all;
- (c) Therefore it follows that the 7 persons who received the aforesaid ballot papers and cast the votes personated for the real electors and that therefore respondent No. 1 received 7 void votes, which must be struck off from his count. We find this issue accordingly.

Issue No. 2.—No evidence was produced in connection with this issue and we decide it against the petitioner.

Issue No. 3.—This issue was not pressed during arguments. It is true that according to the evidence of Shri Des Raj A. D. I. of Schools P.W. 6 who was present at the time of counting of votes a rupee note was found attached to one of the ballot papers recovered from the ballot box of S. Hardit Singh respondent No. 1. But we have not been referred to any rule according to which this circumstance would invalidate the vote. We, therefore, decide this issue against the petitioner.

Issue No. 4.—It is common ground between the parties that respondent No. 1 received 7686 votes and respondent No. 2 Surjit Singh received 7682 votes. Respondent No. 1 beat respondent No. 2 by a margin of 4 votes. As a result of our finding on issue No. 1 it is clear that respondent No. 1 received 7 void votes which must be struck off. The result then is that respondent No. 1 gets 7679 valid votes as against 7682 votes polled by S. Surjit Singh respondent No. 2. We accordingly hold that respondent No. 1 did not receive the requisite majority to entitle him to be declared elected.

Issue Nos. 5 and 6.—In this petition, the petitioner who is an elector has claimed only the relief that the election of respondent No. 1 should be declared as void. According to section 84 of the Representation of People's Act it is open to a petitioner to claim any one of the following declarations from an Election Tribunal:—

- (a) That the election of the returned candidate is void;
- (b) That the election of the returned candidate is void and that he himself or any other candidate has been duly elected or
- (c) That the election is wholly void.

It was open to the petitioner to have claimed in addition to the relief claimed by him, that respondent No. 2 be declared as duly elected and as a result of our findings we could have granted the same to him. But since the petitioner has confined himself only to the relief that the election of respondent No. 1 be declared as void we can grant him that relief alone and no other under section 101 of Representation of the People Act.

Learned counsel for the respondent, however, argued that since it was open to the petitioner also to claim the relief that respondent No. 2 be declared elected and he has not done so his petition should be dismissed. In this contention learned counsel has cited A.I.R. 1955 Allahabad 129 and 1 E. L. R. 162. These rulings certainly do not warrant the proposition propounded by the learned counsel. We, therefore, reject his contention.

In view of the above findings we allow the petitioner and declare the election of Respondent No. 1 to be void. The petitioner shall get his costs from respondent No. 1. Pleaders fee Rs. 250/-.

Announced to Counsel for petitioner and S. Harnam Singh on behalf of Respondent No. 1 should be informed.

(Sd/) CHHAKAN LAL,
Chairman.

(Sd/) KUL BHUSHAN,
Member.

(Sd/) G. M. KEKRE,
Member.

The 17th March 1955.

[No. 82/10/54/4039.]

By Order,
K. S. RAJAGOPALAN, Asstt. Secy.

